

BEFORE THE STATE BOARD OF EQUALIZATION  
OF THE STATE OF CALIFORNIA

In the Matter of the 'Appeal of )  
ARTHUR AND FRANCES E. HARRIGAN )

For Appellants: Arthur Harrigan, in pro. per.

For Respondent: Crawford H. Thomas,  
Chief Counsel

Richard A. Watson  
Counsel

O P I N I O N

This appeal is 'made pursuant to section 19059 of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Arthur and Frances E. Harrigan for refund of ersonal income tax in the amounts of \$41.84, \$75.56, \$112.70, and \$24.00. for the years 1965, 1966, 1967, and 1968, respectively.

The question presented is whether appellant' Arthur Harrigan, a merchant seaman, was a California resident from 1965 through 1968, thereby rendering his entire income taxable.

Appellant has been a merchant seaman for more than 30 years. This is his only occupation. He is a member of the Master, Mates, and Pilots Union, Local No. 90, which has its headquarters in San Francisco. He is registered with the Wilmington, California, office of the union. He was permanently and continuously employed from October 9, 1958, through April 21, 1968, by Moore-McCormack Lfnes and its successor Grace Lines as a deck officer on the SS Santa Ana (formerly named the SS Mor Mac Mar). These two lines operated freighters on a South American trade route, receiving a U.S. Government subsidy under the terms of which they were required to

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maintain scheduled sailings. The SS Santa Ana traveled on such a route. Its voyage always began in San Francisco from which it would first make a 'northwest loop' -going to Vancouver, B.C., and other northwestern ports before returning to San Francisco. It then headed to Los Angeles from which it departed to South America and ports of call in Panama, Columbia, Venezuela, Trinidad, Brazil, Argentina, Uruguay, Peru, and Chile. This freighter then returned to Los Angeles and -finally San Francisco where its voyage always ended. The voyage lasted about 105 days. Thereafter this vessel would then repeat, the same trip. While on a voyage appellant would spend one to three days in each of approximately 25 ports of call. Appellant left the permanent employ of Grace Lines in April 1968. The remainder of that year he took temporary jobs; in California with various shipping companies. During the years at issue: appellant estimated he spent the following time ashore in California: 3 months in 1965; 4 months and 22 days in 1966; 3 months and 25 days in 1967; and 8 months and 9 days in 1968. Except for annual 10-day vacations spent in 1965, 1966, and 1967, in New York or in Arizona, the rest of the days were spent on the SS Santa Ana or in ports of call while on a voyage.

When in California appellant lived with his wife in a home in Redondo Beach, California, acquired by her prior to their marriage and which remained separately owned by her. He has referred to this location as his home. Records and personal effects that appellant does not carry on his voyages are kept there. Appellant maintains a bank account in California. He has been a California voter for 15 years. He is licensed to drive a motor vehicle in this state but does not own any vehicle. He banks in this state. Appellant used the medical and dental facilities of the United States Public Health Service located in California. He has also availed himself of private California doctors and hospitals. He has also used medical facilities and had the services of doctors in Portland, Oregon, and certain foreign countries.

In the years at issue appellants filed joint California resident income tax returns. Subsequently appellants filed amended returns for those years. Mrs. Horrigan, a housewife, filed amended separate resident returns reporting her one-half community share of appellant's income as taxable. Appellant filed separate nonresident returns in which he did not regard the salaries he earned out of state as taxable to him. Respondent regarded the amended returns as constituting refund claims and the subsequent disallowance of the claims gave rise to this appeal.

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Section 17014 of the Revenue and Taxation Code provides:

"Resident" includes:

(a) Every individual who is in this State for other than a temporary or transitory purpose.

(b) Every individual domiciled in this State who is outside the State for a temporary or transitory purpose.

Any individual who is a resident of this State continues to be a resident even though temporarily absent from the State.

Appellant agrees that he was domiciled in California during the period in question. This is consistent with regulation 17014-17016(c) of title 18 of the California Administrative Code which defines "domicile," in part, as follows:

Domicile has been defined as the place where an individual has his true, fixed, permanent home and principal establishment, and to which place he has, whenever he is absent, the intention of returning. It is the place in which a man has voluntarily fixed the habitation of himself and family, not for a mere special or limited purpose, but with the present intention of making a permanent home, until some unexpected event shall occur to induce him to adopt some other permanent home. Another definition of "domicile" consistent with the above is the place where an individual has fixed his habitation and has a permanent residence without any present intention of permanently removing therefrom.

An individual can at any one time have but one domicile. If an individual has acquired a domicile at one place, he retains that domicile until he acquires another elsewhere ... an individual, who is domiciled in California and who leaves the State retains his California domicile as long as he has the definite intention of returning here regardless

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of the length of time or the reasons why he is absent from the State .

Appellant contends, however, that during this period he was outside this state for other than a temporary or transitory purpose, accordingly was not a resident, and consequently maintains that the salaries he earned outside this state were not taxable to him. He asserts he was outside the state for other than a temporary or transitory purpose because during his 9½-year permanent assignment approximately, seventy percent of his time was spent aboard ship.

Regulation 17014-17016(b), title 18, California Administrative Code, discusses the meaning of temporary or transitory purpose, and provides in part:

Whether or not the purpose for which an individual is in this State will be considered temporary or transitory in character will depend to a large extent upon the facts and circumstances of each particular case . It can be stated generally, however, that if an individual is simply passing through this State on his way to another state or country, or is here for a brief rest or vacation, or to complete a particular transaction, or perform a particular contract, or fulfill a particular engagement, which will require his presence in this State for but a short period, he is in this State for temporary or transitory purposes, and will not be a resident by virtue of his presence here.

\* \* \*

The underlying theory... is that the state with which a person has the closest connection during the taxable year is the state of his residence...

Although this latter regulation is framed in terms of whether or not an individual's presence in California is for a "temporary or transitory purpose," the same examples may be considered in determining the purpose of a domiciliary's absence from the state. (Appeal of Nathan H. and Julia M. Juran, Cal. St. Bd. of Equal., Jan. 8, 1968; Appeal of George J. Sevcsik, Cal. St. Bd. of Equal., March 25, 1968.)

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Appellant's absences from California were only to fulfill his contractual obligations as an employee. His absences were not of long duration, were of a standard length, and were interrupted by returns to California. He also spent a substantial amount of time in California at a place he regarded as his home. Under such circumstances, absences because of employment are for temporary or transitory purposes. (See Appeal of Earl F. and Helen W. Brucker, Cal. St. Bd. of Equal., July 18, 1961; Appeal of Earle F. Brucker, Jr., Cal. St. Bd. of Equal., Dec. 19, 1962; Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

It is also clear that during the period in question California was the state with which appellant had the closest connection. The home for his family was established here; he spent virtually all the time he was off duty here; his bank account was here; he was a California voter; he was licensed to drive motor vehicles here; he has referred to this state as his home; and the only ties with any other state, area, or country were the presence of some relatives in New York and the obtaining of certain medical services elsewhere. (See also Appeal of Olav Valderhaug, Cal. St. Bd. of Equal., Feb. 18, 1954.) It is also obvious that appellant obtained many of the benefits accorded by the laws and government of this state, an additional factor indicative of residence here. (Cal. Admin. Code, tit. 18, reg. 17014-17016(a).)

The present factual situation is clearly distinguishable from the Anneal of W. J. Sasser, Cal. St. Bd. of Equal., decided November 5, 1963, relied upon by appellant, where it was held that a member of the merchant marine and a California domiciliary was a nonresident because he was absent from this state for other than a temporary or transitory purpose. Appellant's port of discharge was always California. His family maintained a home here and he considered it his home. He owned no real property in any other state, and he maintained his personal effects here. When comparing appellant's four years under consideration with Mr. Sasser's four-year period, it is further noted that except for the first year appellant spent more time in California than Mr. Sasser. In addition to the aforementioned differences, Mr. Sasser's entire mode of living, unlike appellant's, was characterized by its impermanence.

In view of all the foregoing circumstances, we conclude that appellant was a California resident because he was domiciled here and outside this state only for a temporary or transitory purpose.

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ORDER

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code, that the action of the Franchise Tax Board in denying the claims of Arthur and Frances E. Horrigan for refund of personal income tax in the amounts of \$41.84, \$75.56, \$112.70, and \$24.00 for the years 1965, 1966, 1967, and 1968, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 6th day of July, 1971, by the State Board of Equalization.

Hubert K. Allen, Chairman  
John W. Lynch, Member  
Alfred B. Burch, Member  
\_\_\_\_\_, Member  
\_\_\_\_\_, Member

ATTEST: [Signature], Secretary